

TENNESSEE SEX OFFENDER TREATMENT BOARD

POLICY NO. 6

POLICY AND PROCEDURES FOR FILING A COMPLAINT

The Board has established standards for providers to follow regarding the treatment of sex offenders. Approved providers agree to follow the standards and practices established by T.C.A. 39-13-704. The Board has the responsibility to protect approved providers from irresponsible allegations, and to discipline approved providers who based on objective evidence, violate these standards and practices.

Procedures for Responding to Complaints

1. Definitions

- (a) "Committee" shall mean the Ethics Committee
- (b) "Board" shall refer to the Tennessee Sex Offender Treatment Board
- (c) "Provider Agreement" shall refer to the agreement by the provider to follow the standards and practices established by the board.
- (d) "Complaint" shall mean a standards and practice complaint.
- (e) "Complainant" shall refer to the person who files a complaint.
- (f) "Subject Provider" shall refer to the approved provider who is the subject of a complaint.

2. Purpose and Responsibility of the Ethics Committee

- (a) **Maintain Standards.** The objective of the Ethics committee shall be to promote ethical conduct by Approved Providers.
- (b) **General Operating Rules and Nature of Authority**
 - (1) **Power to investigate.** The Committee has the power to investigate allegations or complaints of unprofessional conduct or conduct in violation of the standards and practices.
 - (2) **Failure to follow these rules and procedures.** Failure by the committee to follow these rules and procedures is not a reason to set aside any action taken by the committee unless the failure resulted in demonstrable prejudice to the complainant.
 - (3) **Relationship to the Board.** The committee is responsible to the Board. The committee shall make regular reports of activity to the Board. Decisions of the committee may be superseded by the Board.

- (4) **Committee Membership.** The committee shall consist of Board members appointed by the Chair subject to the approval of the Board.
- (5) **Chair.** The Chair is to be appointed as a member of the committee.
- (6) **Frequency of Meetings and Quorum.** The committee shall meet at reasonable intervals as needed. A quorum shall consist of a majority of the appointed members of the committee, including the Chair.
- (7) **Jurisdiction.** The committee only has jurisdiction over Approved Providers.
- (8) **Litigation.** Civil, administrative, or criminal litigation pending against approved providers shall not bar the consideration of complaints by the committee. It shall be within the sole discretion of the committee whether to proceed during the course of litigation or wait until its completion. At the committee's discretion, investigations by the committee may be turned over to another body, such as the Health Related Board. The committee, at its discretion, may delay its investigation pending investigations by other agencies. Delays or deferring to another agency shall not constitute a waiver of jurisdiction by the committee.
- (9) **Confidential Sessions.** Committee deliberations are confidential and any attendance beyond the committee's membership shall be at the committee's discretion.

3. **Procedural Steps Involved in Filing a Complaint and Investigation by the Committee**

- (a) **Submitting a complaint alleging violations of Board Standards and practices.** Complaints may be submitted by a client, probation officer, officer of the court, approved provider, or any other person interacting with an Approved Provider. A complaint must contain a precise description of the behavior constituting the allowed violation of standards or practice. The complaint's allegation must cover violations alleged to have occurred no more than one year prior to the complaint being received. The description shall include the Approved Provider's name as well as any other individual who may have witnessed the behavior, been involved in the behavior, or to whom the behavior was directed. An exception- to this rule is that the complainant may choose not to divulge the name(s) of a client if doing so will violate client confidentiality. **All complaints shall be in writing to the attention of the "TSOB Ethics Committee Chair" and sent to the TSOB administrative office.**

- (b) **Determining Approved Provider Status and Acknowledging the Complaint.** Upon receiving the complaint, the Chair will determine
- (1) If the complainant is a current approved provider as of the date of the complaint is received by the Chair;
 - (2) Whether the Approved Provider was approved at the time the violations are alleged to have occurred in the complaint; and
 - (3) Whether the violation is alleged to have occurred within one year prior to the date the Chair received the complaint.
 - i. If the Chair determines the complaint satisfies the above requirements, then the chair will notify the Complainant in writing that the complaint has been referred to the committee.
 - ii. If the Chair determines that the above requirements are not met, the Chair will send written notification to the Complainant that the Board cannot take any action on the complaint, giving reasons why.
 - iii. The Chair's determinations as to whether the above conditions were met shall not be final and are subject to review by the committee and the Board. If the Complainant or the Subject Provider disagrees with any of the Chair's determinations, they may request a review by the committee. The committee's determination shall only be subject to review by the Board.
 - iv. In any case, within 10 business days from the date the Chair receives the complaint, it will provide the Complainant with written acknowledgment of its receipt of the complaint, which will include the date it received the complaint.
- (c) **Subject Provider Request for Reply.** The Chair shall send the Subject Provider a copy of the complaint within 10 business days after the Chair sends acknowledgment of the complaint to the Complainant. The complaint will be accompanied with the alleged violations of standards and practices and a letter requesting the Subject Provider to provide the Chair with a response within 21 days of the date of the letter. Failure by the Subject Provider to file a timely response is grounds for suspension and revocation.
- (d) **Lack of Cooperation.** Failure or delay in responding, or lack of cooperation in the investigation shall not prevent continuation of any

proceedings and in itself may constitute a violation of the provider agreement or these rules and procedures.

- (e) **Action of the Committee.** Within a reasonable time, the Chair shall provide committee members with copies of the complaint, as well as the Subject Provider's response. The committee may determine that additional information is required from the Complainant, the Subject Provider, and/or a third party that may have pertinent information. Based upon the type of information required, the committee will make a written request of the individual or individuals it deems to have relevant information to respond within a particular period of time. Failure of a provider to respond to the committee is grounds for suspension and/or revocation. Once the committee determines that it has sufficient information, it will deliberate and render a recommendation to the Board regarding the allegations in the complaint. Such a recommendation shall be agreed upon by a majority vote of the committee's members.
- (f) **Case Closure.** After receipt of a written response from the Subject Provider, the committee may determine that the complaint has no basis in fact, or is insignificant, and may dismiss the complaint without further action.
- (g) **Information from Other Sources.** The committee may request additional information from persons or witnesses involved, Boards, committees, ethic committees of professional licensing boards or relevant entities.
- (h) **Action of the TSOB.** The Committee Chair shall present the recommendations to the Board during the next regularly scheduled Board meeting after the committee has agreed upon a recommendation. Final decision by the Board regarding disposition of the Complaint shall be determined through discussion and a formal resolution by the Board. The resolution shall describe the sanctions, if any, to be imposed against the Subject Provider. The Board's action shall not be subject to review by any court of law or other forum, except for procedural compliance with these rules.
- (i) **Notification of Parties Involved.** The TSOB staff, in coordination with the Chair of the committee, will notify the complainant and Subject Provider regarding the Board's final resolution.
- (j) **Monitoring of Sanctions.** The Chair of the Committee will coordinate and monitor any sanctions that are decided upon by the Board.
- (k) **Notification of Approved Providers.** If the Board finds that the Subject Provider violated standards and/or practices, it shall publish the member's name; the circumstances of the violation; the standards

violated; the corrective action, directive and/or sanction(s) imposed; and the status of the Subject provider on the website and on the Subject Provider's approval status on the approved provider registry.

- (l) **Waive right to Subpoena.** Approved Providers' provider agreement to waive any right to subpoena from TSOB officers, directors and any documents or information in connection with a complaint, including committee investigations and recommendations and Board materials, for any purpose including civil litigation.

4. CONFIDENTIALITY

- (a) **Correspondence.** All case materials mailed from the Board relating to a specific complaint shall be designated as confidential both on the envelope and on the face of the material enclosed.
- (b) **Disclosure of Information During Investigations.** All information concerning complaints against Approved Providers shall be confidential except that the committee may disclose such information when compelled under a validly issued subpoena or court order or when otherwise required by law. The committee in its sole discretion may divulge such information as it deems necessary to complete its investigation.
- (c) **Disclosure of Information in Cases Closed by the Committee.** If the committee dismisses a complaint without further action, it shall so notify the Complainant and the Subject Provider in writing of its action. The committee's action shall be final and binding upon the parties and shall not be subject to review by any court of law or other forum, except procedural compliance with these rules.
- (d) **Disclosure of Corrective Action, Directives and/or Sanctions.** If the disposition of a case results in a corrective action, directive, and/or sanction, a description of the corrective action, directive and/or sanction can be released to any individual upon that individual's written request. TSOB will respond to the written request by providing the name of the Subject Provider, the practice standards violated, and the corrective action, directive and/or sanctions imposed against the Subject Provider.
- (e) **Requirement of confidentiality.** Except as otherwise provided within these rules and procedures, all information concerning complaints against Approved Providers shall be confidential. Notwithstanding the confidential nature of complaint materials, such information may be released when the Chair and the Board in their discretion agree that the release of that information is necessary to protect the interests of:

- (1) the Complainant or Subject Provider

- (2) other investigative bodies
- (3) TSOB
- (4) The public
- (5) A client, and that the release will not unduly interfere with the Board's interest in respecting the legitimate confidentiality interests of participants, the review process, the interests of clients, and the Board's interest in safeguarding the confidentiality of internal peer review deliberation.

- (f) **Communication for Investigation.** Nothing in this section shall be construed as preventing the committee from communicating with the Complainant, witnesses, potential members of other fact-finding committees, or other sources of information necessary to enable the committee to carry out its investigative function.

5. RECORDS

- (a) **Confidential Permanent Files.** Permanent files of the committee shall be confidential according to these rules and procedures. The files shall be maintained at the main administrative office, and shall be available only to those specifically authorized by the committee. These records are the property of TSOB.
- (b) **Files for Revoked Approval Status.** Files of providers who have had their approval status revoked because of practice violations shall be maintained for five years.
- (c) **Files for non-violation.** Except for cases closed for insufficient evidence, personally identifiable information concerning Subject Providers who have been found not to have committed a practice violation shall be destroyed five years after the committee has closed the case.
- (d) **Files for Insufficient Information.** In cases where the committee has closed a case due to evidence insufficient to sustain a complaint, records containing personally identifiable information shall be maintained for five years after the committee has closed the case.
- (e) **Files for Lesser Sanctions.** In cases where the committee has found a practice violation, but where the sanction is less than revocation, records containing personally identifiable information shall be maintained for five years after the committee has closed the case.
- (f) **Records for Educational Purposes.** Nothing in this section shall preclude the committee from maintaining records in a form that prevents identification of the parties involved so that the records may be used for remediation, education, or other legitimate purposes.

6. RECOMMENDATION DEVELOPMENT

- (a) **Focus of Recommendations.** Since the purpose for investigating complaints is to improve the profession and instill confidence from the community, any corrective action, directive and/or sanction recommended by the committee and resolved by the Board shall be fashioned with an aim to instruct whenever possible.
- (b) **Form of Recommendations.** The committee has the latitude to suggest a broad array of corrective actions, directives, and/or sanctions. Its final written recommendations shall, however, include:
 - (1) a synopsis of its findings regarding each of the alleged violations;
 - (2) details describing its rationale for the conclusions drawn;
 - (3) specific corrective actions, directives, and/or sanctions to be imposed upon the Subject Provider;
 - (4) the impact of these recommendations on current and future providers; and
 - (5) a specific time-frame for any recommended corrective action, directive and/or sanction.
- (c) **Sanctions for non-compliance with requests for information from providers pertaining to an ongoing investigation of a practice violation.** The committee may immediately impose temporary suspension of an Approved Provider for any provider who does not fully comply with informational or investigatory requests from the committee. Other sanctions may be considered with consultation from the Board. Approved status will be fully reinstated upon compliance with the committee's requests.
- (d) **Sanctions for non-compliance with approved final recommendations.** The committee may recommend, additional and more severe consequences for providers who do not comply with corrective actions, directives, and sanctions approved by the Board as a result of findings of practice violations.

7. TYPES OF RECOMMENDATIONS FOR SANCTIONS, CORRECTIVE ACTIONS AND DIRECTIVES

- (a) **Cease and Desist Order.** This directive requires the Subject Provider to cease and desist specified violation.

- (b) **Education or Training Requirements.** This corrective action requires the Subject Provider to engage in education and/or training specified and approved by the committee.
- (c) **Supervision or Clinical Consultation Requirement.** This corrective action requires that the Subject Provider engage in supervision or clinical consultation by a supervisor or consultant recommended and approved by the committee. The committee may stipulate the type, frequency, duration, goals, and content of supervision or consultation.
- (d) **Reprimand.** This sanction requires that a written statement of censure for unprofessional or practice violations be sent to the Subject Provider clarifying the inappropriate nature of the subject provider's conduct.
- (e) **Evaluation and/or Treatment.** This directive requires that the Subject Provider be evaluated to determine the possible need for treatment and/or, if a dysfunction has been established, to obtain remedial treatment approved by the committee and the Board.
- (f) **Probation.** Probation is a directive which places the Subject Provider on close scrutiny for a fixed period of time. Probation usually involves restricting the Subject Provider's activities. During this time the Board may require conditions which must be met before probation will be lifted
- (g) **Suspension.** Suspension is an immediate change in approval status that ends the Subject Provider's approval to provide sex offender treatment and/or assessment services until a specified period of time elapses or until the Board allows reinstatement.
- (h) **Revocation.** Revocation constitutes expulsion from the current and future approved provider registry on a permanent basis

8. APPROVED PROVIDER REGISTRY

- (a) **Application for Approval Status.** The chair of the committee shall review applications to become an approved provider. After such review, the Chair may recommend to the Board that an application to become an approved provider be denied or voided because of past or current practice violations.
- (b) **Voided Approval Status.** The Chair may recommend to the Board that it void the approval status of any provider who obtained approval on the basis of false or fraudulent information.
- (c) **Resignation of Approved Provider.** A Subject Provider's resignation shall have no effect upon the investigation and resolution of a complaint, so long as the violation(s) alleged in the complaint took place during the

term of the Subject Provider's approved status.

- (d) **Application for Readmission.** The committee shall automatically review all applications for readmission received by the Board from persons who have been revoked or suspended.
- (e) **Procedures for Readmission.** The Chair shall submit to the Board for consideration a summary of the application for readmission, including copies of any statements submitted by sponsors of the application and any available record of the previous case against the former provider. The Board shall make one of the following recommendations:
 - (1) **Readmission.** Recommend that the former provider be readmitted to "Approved Provider Registry."
 - (2) **Denied Readmission.** Recommend that the former Approved Provider's readmission be denied.
 - (3) **Deferred Decision.** Recommend that the former Approved Provider's applicant be deferred pending the results of further inquiry or investigation.

9. PROCEDURES FOR COMMENCING AN INVESTIGATION ON THE COMMITTEE'S OWN MOTION

The committee may commence an investigation according to these rules and procedures under the following circumstance.

- (a) **Felony or other Illegal Offense.** When the committee learns that an Approved Provider has been convicted of a felony or other illegal behavior that reflects adversely on the provider's fitness to provide professional services or tasks and the committee determines that an investigation is necessary for protection of the public or the profession, and such felony conviction is not under appeal.
- (b) **Revocation or Suspension.** When the committee learns that an Approved provider's license has been suspended or revoked and the action is not under appeal.
- (c) **Public Information.** When the committee learns of publicly available information indicating unethical conduct and the committee determines that commencing an investigation is necessary for the protection of the public or the profession.
- (d) **Multiple Complaints.** The committee may take into consideration previous complaints, regardless of the outcome and may elect to commence an investigation under these rules and procedures if the

committee determines that there has been a pattern of questionable behavior.

- (e) **Notice to Subject Provider.** The committee shall provide notice to the Subject Provider that it has commenced an investigation on its own motion with the same specificity required as if a complaint were filed, and Subject Provider shall have the same time period to respond as if responding to a complaint.

10. General Considerations

- (a) **Time Requirements.** Any failure to the time requirements specified in these rules and procedures shall not prevent an investigation from proceeding to final resolution by the Board unless the committee or Subject Provider can show that such failure was willful or prejudicial.
- (b) **Clarification by Committee on Client Responsibility.** If the Subject Provider believes there is conflict between responsibility to clients and the committee's request for information, the Subject Provider may seek advice from the committee to resolve the conflict.
- (c) **Release of Information.** The complainant, upon submitting a complaint, is deemed to have consented that the complaint and all associated materials submitted with the complaint will be provided to the Subject Provider; and to other people, as provided in these rules and procedures.
- (d) **Telephone inquiries about potential complaints.** Telephone inquiries shall not be considered as complaints.
- (e) **Previous Remedy.** The complainant may be required to inform the committee of previous steps, if any, that have been taken to remedy the situation.

11. EVALUATION OF COMPLAINTS

- (a) **Evaluation by the committee.** The committee shall review each complaint and take action as outlined in these procedures.
- (b) **Immediate referral.** The committee shall refer any matter to the Health Related Board in accordance with AP Aethical guidelines prior to action taken by the committee.
- (c) **Impaired Providers.** The Chair may determine that the alleged violation may have resulted from an Approved Provider's substance abuse, mental and/or emotional problems. Such a determination will not preclude the committee from proceeding with the process outlined in

these procedures and may, in fact, form the basis of the committee's recommendation to the Board.

- (d) **Violations with potential Harm to Public.** If the committee determines that alleged practice violations has potential for harm to the public, the Chair shall immediately consult with the Board's legal counsel, who may recommend that the case be referred to the appropriate jurisdiction or law enforcement.
- (e) **Conflict of Interest.** The committee must first determine that there is no conflict of interest precluding the committee from proceeding with the complaint (e.g., complaint against Board member, etc.). If a conflict of interest is deemed present, the Chair shall immediately notify the Board and Board's counsel. If the complaint involves the Chair, the Board shall appoint another member of the Board to Chair the committee matters involving this complaint. If the conflict involves any other member of the committee, that member shall recuse him/herself from committee discussions and decisions pertaining to the case.
- (f) **Request for Further Information.** If the committee determines that there is insufficient information from which to make a recommendation to the Board, the committee may request further information from the complainant or others. If a request is made by a complainant, the complainant shall have twenty-one (21) days to respond. Failure to respond to this request may result in a recommendation to dismiss the complaint for lack of evidence.
- (g) **Anonymous Complaints.** The committee shall not act upon anonymous complaints except when information in the public domain is of sufficient weight that the committee deems it necessary to commence an investigation' on their own motion.
- (h) **Complaints about non-approved providers.** Complaints about non-approved providers will not be considered.
- (i) **Counter Complaints.** The committee will not accept formal complaints from a Subject Provider against a complainant provider during the course of an investigation of the initial complaint. The committee will not consider a countercharge until after the initial complaint is resolved.
- (j) **Capricious Complaints.** The committee may recommend that a complaint be filed against a complainant if the committee determines that the initial complaint is capricious or intended primarily to harm the Subject Provider rather than uphold professional standards.